

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, et al.,

Plaintiffs,

v.

HERBERT H. SLATERY III, et al.,

Defendants.

CIVIL ACTION

CASE NO. 3:20-cv-00501

JUDGE CAMPBELL
MAGISTRATE JUDGE FRENSEY

**MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(2)**

Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiffs Memphis Center for Reproductive Health d/b/a Choices, Planned Parenthood of Tennessee and North Mississippi, Knoxville Center for Reproductive Health, Femhealth USA, Inc. d/b/a carafem; Dr. Kimberly Looney, and Dr. Nikki Zite (together, “Plaintiffs”), on behalf of themselves and their patients, physicians, and staff move this Court to grant the instant motion under Rule 41(a)(2) to dismiss this case without prejudice. As indicated in Plaintiffs’ accompanying Rule 62.1 motion, Plaintiffs are also willing to have the Court’s July 24, 2020 Preliminary Injunction Order (ECF No. 42) (“PI Order”) vacated.

Dismissal without prejudice under Rule 41(a)(2) is appropriate here in light of the Supreme Court’s June 24, 2022 decision in *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 2022 WL 2276808 (U.S. June 24, 2022), that broke with nearly fifty years of precedent and overruled *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). Because of this decision, Plaintiffs’ claims in this

case are now moot. This drastic change in the law underpinning Plaintiffs' Complaint (ECF No. 1) justifies dismissal, as Plaintiffs now believe proceeding with their challenge will be futile. *Logue v. Nissan N. Am., Inc.*, No. 08-2023-STA/DKV, 2008 WL 2987184, at *6 (W.D. Tenn. July 30, 2008). Dismissal should be without prejudice because Defendants will suffer no "plain legal prejudice" as a result. *Grover by Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994).

Concurrent with this motion, Plaintiffs have also asked the Sixth Circuit to dismiss the Defendants' appeal of the Court's PI Order as moot, remand this case with instructions to dismiss the case, and vacate the PI Order if necessary.

Pursuant to Local Rule 7.01(a)(1), Plaintiffs informed Defendants on June 24, 2022, of their plan to move to voluntarily dismiss the case without prejudice and their willingness to seek vacatur. Plaintiffs again followed up via email on June 26, 2022, to inquire about Defendants' position on this motion. Defendants oppose.

For the foregoing reasons, and as set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that this Court dismiss Plaintiffs' Complaint without prejudice. A proposed Order is attached hereto.

Dated: June 27, 2022

Respectfully submitted,

/s/ Stella Yarbrough

Stella Yarbrough (No. 33637)
American Civil Liberties Union
Foundation of Tennessee
P.O. Box 12160
Nashville, TN 37212
Tel: (615) 320-7142
syarbrough@aclu-tn.org

Attorney for Plaintiffs

Susan Lambiase*
Planned Parenthood Federation of America
123 William St., 9th Floor
New York, NY 10038
Tel: (212) 261-4405
Fax: (212) 247-6811
susan.lambiase@ppfa.org

*Attorney for Planned Parenthood of
Tennessee and North Mississippi and
Kimberly Looney, M.D.*

Jessica Sklarsky*
Rabia Muqaddam*
Nicolas Kabat**
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
Tel: (917) 637-3600
jsklarsky@reprorights.org
rmuqaddam@reprorights.org
nkabat@reprorights.org

Jen Samantha D. Rasay*
Center for Reproductive Rights
1634 Eye Street NW
Washington, DC 20006
Tel: (917) 637-3769
jrasay@reprorights.org

*Attorneys for Memphis Center for
Reproductive Health d/b/a Choices*

Brigitte Amiri*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2633
bamiri@aclu.org

*Attorney for Knoxville Center for
Reproductive Health and Femhealth USA,
Inc.*

*Admitted *pro hac vice*

***Pro hac vice* application forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2022, I electronically filed the foregoing through the Court's CM/ECF system, which automatically sent copies to all counsel of record.

Alexander S. Rieger
Office of the Attorney General and Reporter
P.O. Box 20207
Nashville, Tennessee 37202-0207
alex.rieger@ag.tn.gov

/s/ Stella Yarbrough

STELLA YARBROUGH